

### **§ 340.3**

will have paid or will pay benefits for days of sickness resulting from that infirmity.

#### **§ 340.3 When amounts recoverable to be recovered.**

Amounts recoverable shall be recovered in all cases except those in which recovery is waived under § 340.10 or a compromise is approved under § 340.13.

#### **§ 340.4 Methods of recovery of amounts recoverable.**

An amount recoverable may be recovered by any one or a combination of the methods described in §§ 340.5, 340.6, 340.7, and 340.8.

#### **§ 340.5 Recovery by cash payment.**

The Board shall have the right to require that amounts recoverable be immediately and fully repaid in cash and any debtor shall have the absolute right to repay such amount recoverable in this manner. However if the debtor is financially unable to pay the indebtedness in a lump sum, payment may be accepted in regular installments. The amount and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Whenever possible installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than three years.

#### **§ 340.6 Recovery by setoff.**

An amount recoverable may be recovered by setoff against any subsequent payments to which the individual from whom the amount is recoverable is entitled under the Railroad Unemployment Insurance Act, the Railroad Retirement Act, or any other Act administered by the Board, or, in the case of that individual's death, from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before recovery is completed, such recovery shall be made from his estate or heirs.

[53 FR 2489, Jan. 28, 1988]

### **20 CFR Ch. II (4-1-00 Edition)**

#### **§ 340.7 Deduction in computation of death benefit.**

In computing the residual lump sum provided for in part 234, subpart D, of this chapter, the Board shall include in the benefits to be deducted from the gross residual all amounts recoverable under this part, but not recovered, including amounts where recovery was waived, that were paid to the individual or paid to others as benefits accrued to the individual but not paid at death.

[57 FR 1379, Jan. 14, 1992]

#### **§ 340.8 Recovery by adjustment in connection with subsequent payments under the Railroad Retirement Act.**

Recovery under this part may be made by permanently reducing the amount of any annuity payable to the overpaid individual (or an individual receiving an annuity based upon the same compensation record as that of the overpaid individual) under the Railroad Retirement Act. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

*Example:* An individual agrees to recovery of a \$5,000 overpayment made to him by actuarial adjustment to an annuity awarded him under the Railroad Retirement Act. However, he dies before negotiating the first annuity check reflecting his actuarially reduced rate. The \$5,000 is not considered recovered.

[57 FR 1379, Jan. 14, 1992]

#### **§ 340.9 Effect of adjustment in connection with subsequent payments.**

Adjustment by the method described in § 340.8 shall constitute recovery of the amount recoverable.

#### **§ 340.10 Waiver of recovery of erroneous payments.**

(a) *When waiver of recovery may be applied.* Section 2(d) of the Act provides that there shall be no recovery in any case where more than the correct